THE HON'BLE SMT JUSTICE T.MEENA KUMARI

and

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL NO : 157 of 2000

25-07-2005

Between:

Mohammed Khaja,

..... APPELLANT

AND

1. The Labour Court, Godavarikhani,

   Karimnagar District.

2. The Depot Manager, APSRTC, Bus Depot, Nirmal,

   Adilabad Dist.

.....RESPONDENTS

The Court made the following :

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JUDGMENT: (Per the Hon'ble Smt Justice T.Meena Kumari)

1. The appellant, call in question, the legality of the order of dismissal rendered by a learned single Judge of this Court dated 03-11-1999 in W.P.No.2406 of 1993,which was filed assailing the award passed by the Industrial Court, in I.D.No. 345/90 dt. 23.12.1991.

2. The unsuccessful writ petitioner is the appellant herein. The facts necessary to resolve the controversy between the parties as set out in the writ petition are that;

The petitioner was originally appointed as driver by the respondent corporation and while on duty on 7-8-1989, a check was performed by the vigilance staff of the respondent-corporation and in pursuance of the same the appellant was subjected to a disciplinary enquiry on two charges and the same were proved. Consequently, he was removed from service. When the authorities rejected the appeal of the appellant, he preferred the I.D., before the Labour Court. The Labour Court having found that the charges were proved held that if the appellant gave his willingness, in writing, to be appointed as Helper, he may be appointed, as such. Aggrieved by the same, the petitioner filed the writ petition.

3. The respondent-corporation contested the said writ petition on the ground that the writ petitioner having availed the benefit of fresh appointment in the lower cadre, cannot now question the award in the writ petition. The learned Single Judge after going through the material placed before him and following the proposition of law laid down by the Supreme Court dismissed the writ petition. Aggrieved by the order in the writ petition, the present appeal is filed.

4. Heard the learned counsel on either side.

6. We have perused the order impugned and other material on record. From the above, it has to be observed that when the charges leveled against the appellant were proved, the Labour Court directed that if the appellant herein was willing to work afresh as a Helper, and if he gave such willingness in writing, the respondent-corporation should appoint him as Helper. In consequence of the said order, the appellant herein gave his willingness in writing and obtained the benefit of fresh

appointment. The learned Single Judge having found that the conclusions reached by the Labour Court were based on admissible evidence not inclined to interfere with the award. The learned Single Judge further observed that the appellant having taken the benefit of the award of Labour Court, now cannot turn round after about 14 months and challenge the award on other counts. The learned Single Judge having followed the proposition of law laid down by the Supreme Court in STATE OF PUNJAB V KRISHNA NIVAS (1997 (3) Supreme 551) that if an employee accepts the beneficial part of the order in a disciplinary enquiry and, rejoins the duty on a reduced punishment, he cannot later on turn round and challenge the award on the other grounds. Hence, the cogent reasons adduced in the order under challenge and also the observations made by the learned Single Judge based on the facts and circumstances of the case and also the proposition of law laid down by the Supreme Court, in our considered view, does not warrant any interference either on merits or on legal propositions.

6. For the aforesaid reasons, we do not find any illegality or irregularity in the order under challenge and the finding of the learned single Judge is perfectly justified and needs no interference by this Court.

7. The appeal fails and is dismissed accordingly. No costs.

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T.MEENA KUMARI, J

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P.LAKSHMANA REDDY, J

25.07.2005

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THE HON'BLE SMT JUSTICE T.MEENA KUMARI

and

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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WRIT APPEAL NO : 157 of 2000

(Judgment of the Division Bench delivered by

Hon’ble Smt Justice T Meena Kumari)

25th JULY 2005